

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the **Appeal of**)
RONALD W. MATHESON)

For Appellant: Ronald W. Matheson, in pro. per.)
For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ronald W. Matheson against a proposed assessment of additional personal income tax in the amount of \$981.66, **plus** penalties in the total amount of \$539.92, for the year 1977.

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The question for decision is whether appellant has established error in respondent's proposed assessment of additional tax or in the penalties assessed for 1977.

Appellant resides in Anaheim, California. On April 13, 1978, he submitted a personal income tax return Form 540 for 1977 which contained no information regarding his income or allowable deductions. In the spaces provided for such data, he either entered the word "none" or indicated that he objected to the questions under the Fourth and Fifth Amendments to the United States Constitution. He attached a statement setting forth his contention that he had not earned enough even to be required to file a return, because the Federal Reserve notes which he received were not constitutional dollars. On the Form 540 he reported no tax liability but claimed a refund of \$858.55, consisting of a renter's credit (\$35.00), excess state disability insurance (SDI) tax withheld (\$14.64), and California personal income tax withheld (\$808.91).

Respondent notified appellant that the incomplete Form 540 which he had submitted for 1977 did not constitute a valid return and demanded that he file a properly completed return for that year within twenty days. Appellant's only response to that demand was a letter reiterating his contention that he was constitutionally protected from having to file a return or provide the information requested on the Form 540.

On the basis of information furnished by appellant's employer to the California Employment Development Department, and other available sources, respondent ascertained that appellant had received wages totalling \$18,106.00 in 1977, none of which had been reported on the Form 540 which he submitted for that year. Accordingly, respondent issued its notice of proposed assessment of additional personal income tax in the amount of \$981.66. Respondent also imposed penalties totalling \$539.92, consisting of a 25 percent penalty for failure to file a return (Rev. & Tax. Code, § 18681), a 25 percent penalty for failure to file after notice and demand (Rev. & Tax. Code, § 186831, and a 5 percent negligence penalty (Rev. & Tax. Code, § 18684).

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It is settled law that respondent's determinations of tax and penalties, other than the fraud penalty, are presumptively correct, and the burden rests upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) The issues and arguments presented by this appeal are substantially similar to those discussed in numerous prior cases before this board. (See, e.g., Appeal of Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977; Appeal of Iris E. Clark, Cal. St. Bd. of Equal., March 8, 1976.) In each of those cases, we have found the taxpayer's contentions to be totally without merit and we see no reason to reach a different conclusion here. Suffice it to say that, during 1977, appellant had taxable income he was required to report, and his objections to the monetary and tax systems of this country are insufficient to overturn respondent's computation of his California personal income tax liability for that year.

With respect to the penalty assessments here in issue, appellant contends that the penalties for failure to file a return and for failure to file on notice and demand were improperly assessed against him because he did file a timely return for 1977 on April 13, 1978. As we explained at considerable length in Appeal of Arthur W. Keech, supra, a **Form 540** such as the one filed by appellant which contains no information regarding the individual's income or deductions is not a valid return under the applicable provisions of the Personal Income Tax Law and respondent's regulations. (Rev. & Tax. Code, § 18401; Cal. Admin. Code, tit. 18, reg. 18401-18404(f).) Thus, although appellant filed a timely Form 540, he did not file a timely "return". Moreover, his failure to file a proper return was not, in our opinion, due to reasonable cause. (See Appeal of Richard E. Krey, Cal. St. Bd. of Equal., Feb. 3, 1977.)

In addition, we see no reason to overturn respondent's determination that a 5 percent negligence penalty should also be imposed under section 18684 of the Revenue and Taxation Code. Appellant has failed to show that his underpayment of tax for 1977 was not due to negligence or intentional disregard of rules and regulations.

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Although we have sustained respondent's action with respect to the proposed assessment of additional **tax** and penalties for 1977, one minor adjustment must be made to the penalty assessed for failure to file a timely return. Appellant has complained that respondent has not given him credit for the amount of California personal income tax withheld from his salary during 1977, or for excess **SDI** tax withheld in that year. Appellant has failed to produce any evidence to substantiate his alleged overpayment of **SDI tax**. Respondent has advised us, however, that the amount of its deficiency assessment will be reduced to reflect the amount of California personal income tax withheld from appellant's salary in 1977.^{1/} Under the provisions of subdivision (b) of Revenue and Taxation Code section 18681, the amount of tax on which the penalty for failure to file a timely return is to be computed "shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return." Since the section 18681 penalty which was assessed against appellant is based upon the full amount of the tax deficiency, without any credit for tax withheld, an appropriate reduction in that penalty assessment must be made. No adjustment of the other penalties is required under the penalty provisions.

^{1/} Respondent's records show the amount of such withholding to be \$88.00; appellant contends that figure should be \$808.91. The burden rests upon appellant to establish he is entitled to a withholding credit in an amount greater than \$88.00, or to any other tax credit.,



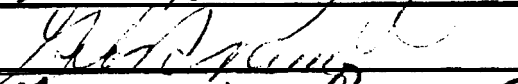
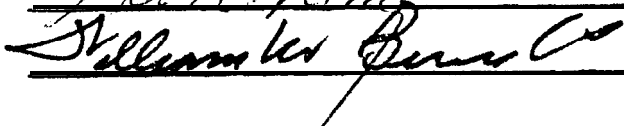

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ronald W. Matheson against a proposed assessment of additional personal income tax in the amount of \$981.66, plus penalties in the total amount of \$539.92, for the year 1977, be and the same is hereby modified in that a credit shall be allowed against the proposed assessment of additional tax to reflect the amount of California personal income tax withheld from appellant's salary in 1977, and the amount of the penalty imposed under section 18681 of the Revenue and Taxation Code shall be reduced to reflect such withholding. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 6th day of February , 1980, by the State Board of Equalization.

	, Chairman
	, Member
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